



महाराष्ट्र शासन राजपत्र

भाग एक-ल

वर्ष ६, अंक २८]

गुरुवार ते बुधवार, सप्टेंबर २५-ऑक्टोबर १, २०१४/आश्विन ३-९, शके १९३६ [पृष्ठे १६, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI.

BEFORE SHRI J. P. LIMAYE, MEMBER

APPLICATION (MRTU) No. 3 OF 2002.—Maharashtra Rajya Rashtriya Kamgar Sangh, C/o Rashtriya Mill Mazdoor Sangh, G. D. Ambekar Marg, Mazdoor Manzil, Parel, Mumbai-12.—*Applicant.*—*Versus*—The National Sport's Club of India, Lala Lajpatrai Marg, Worli, Mumbai 400 018, (2) Hotel Mazdoor Sabha, Kothari Mansion, 4th floor, Opp : G. P. O., Fort, Mumbai 400 001.—*Non-Applicants.*

CORAM.—Shri J. P. Limaye, Member

Appearances.—Mrs. S. S. Hadkar, Advocate for Applicant.

Shri V. K. Gehlot, Advocate for Non-Applicant.

Shri M. V. Palkar, Advocate for Non-Applicant Union.

JUDGMENT

1. This is a application filed by the Applicant Union for seeking registration as a recognised Union under the provisions of Section 14 of the M. R. T. U and P. U. L. P. Act, 1971 in the establishment of Non-Applicant company. It is contended by the Applicant Union that the Applicant Union is registered trade Union registered under the Trade Unions Act, 1926 on 20th February 1996 *vide* certificate No. H. O. (III) (d)-9208 issued by the Registrar of Trade Unions, Mumbai and the same is also annexed herewith. It is further stated that the Office Bearers of the Applicant Union are duly elected on 25th August 2001 and the list of the said Office Bearers is also enclosed with the present application *i. e.* Annexure 'B'. It is further submitted that the Applicant Union is having the following Membership in the undertaking *i. e.* Non-Applicant company for the whole period of six calendar months immediately preceding the month in with the application is made *i.e.* from October, 2001 to March, 2002 and the said percentage is 99% to 100% and the list of the members is enclosed herewith. It is further submitted that the Applicant Union in its executive committee meeting which was held at the Office at Parel on 17th August 2001 and was decided that the Union should apply for the registration as a recognised Union for the Non-Applicant company. It is further submitted that the undertaking for which the present Applicant Union seeks recognition is engaged in sports,

health, refreshment etc. The undertaking is known as National Sports Club of India. The said undertaking is managed by the Chairman and the Vice Chairman and Regional Secretary, Joint Secretary, General Manager named in clause 6 of the present application. The Applicant Company is having its Constitution and as per Section 19 of the Act, the provision is made accordingly in the said constitution and the copy of the same is also enclosed herewith. It is further stated that the Applicant Union has tendered prescribed fee of Rs. 5 for this application. It is further stated that the Applicant Union has not instigated, aided or assisted the commencement or continuation of strike amongst the employees in the undertaking for which the Applicant Union seeks recognition which is deemed to be illegal under the Act within 6 months immediately preceding the date of the application. It is further stated that Applicant Union has not made any application for registration as a recognised Union before any Industrial Court under the Act. It is further submitted that the membership subscription is Rs. 5 per month which is prescribed. The executive committee of the Applicant Union has also taken place on the dates during the 12 months preceding the date of the present application *i. e.* 5th January 2001, 10th April, 2001, 17th April 2001, 6th October 2001 and 15th January 2002. It is further stated that the Applicant Union has maintained the Minute Book in which all the resolutions passed by the executive committee or General Body of the Union are recorded. It is also stated that the Applicant Union is maintaining the accounts and such accounts were lastly audited by Shri S. A. More and the said report of the Auditor is also there on record below Ex. U-5. The accounting year of the Applicant Union is from January to December. It is also stated that the Applicant Union has on his roll of members employed in the undertaking other than the undertaking for which the application is filed. It is further submitted by the Applicant Union that following documents which are enlisted are filed along with the present application. (1) Registered address of the Applicant Union, (2) A list of the members of the Applicant Union who are employed in the undertaking for which recognition is sought, arranged alphabetically with date of such employees joining as a members, (3) A true copy of the certificate of recognition as a Trade Union. (4) Authority of the person for filing the application and doing all necessary thing on behalf of our Union, (5) A true copy of the constitution of the Applicant Union, (6) The membership register for the relevant period. (7) The original receipt books having book Nos. 224, 225, 226, 227, 228, 229 and 231 having membership receipts Nos. 11151 to 11450 and 11547 to 11550 for the period October, 2001 to December, 2001.

2. It is further stated that the trade Union, namely, Hotel Mazdoor Sabha is recognised as recognised Union for the above undertaking long back. The Applicant Union further claims that it has larger majority of the employees employed in the same undertaking in which Hotel Mazdoor Sabha has registered as a recognised Union. It is also stated that the Applicant Union has made an application of registration as a recognised Union in place of already recognised registered as such. Thus, by submitting the same, the Applicant Union prayed reliefs as prayed in the prayer clauses and all the relevant documents filed on record.

3. After filing the present application, notices were issued to the parties and the Non-Applicant Company and Non-Applicant Union appeared on record. The Non-Applicant Company has raised objection by filing affidavits below Ex. C-3, Ex. C-4, Ex. C-5 and Ex. C-6 along with the documents and stated that after filing an application on 1st September 2002, in which the workers who are the members of the Applicant Union have resorted to illegal and unjustified strike without any notice or intimation. Accordingly, the copy of notice dated 2nd September 2002 and appology letter dated 2nd September 2002 and the letter to the above Union dated 3rd October 2002 are also enclosed herewith. By filing the same, it is submitted that the Applicant Union has acted against the resolution dated 28th August 2002 and violates the resolution of the Club Management and hence, the application under Section 14 of the Act for getting registration needs to be considered in this context whether to be allowed or not. Thus, accordingly, the same objection has been raised in the other application filed below Ex. C-5, Ex. C-6 and have placed on condition in the clause No. 6 of Ex. C-6 which is also part of Ex. C-5 *i.e.* stated that the Applicant Union should ensure the industrial peace of the club premises, not to interfere in the matter like posting, transfer, duty attendant, appointment of workmen which is entirely management function and done of functional requirement, co-operate on the smooth running of the club and service being provided to the members, if there are any substantive issue, the management will always be ready to deal with them as per the provision of law, maintenance of discipline in the club if the same is accepted by the Applicant Union, the Non-Applicant company has no grievance.

4. In reply, the Non-Applicant Union has also filed an affidavit below Ex. UA-2. The same is filed by their by their General Secretary Shri P. D. Bhosle and it has been categorically stated that the said Union was functioning in the Non-Applicant company for last more than 27 years in the capacity of a recognised Union but for the last 3 to 4 years in the Non-Applicant has lost its majority of the workmen working in the Non-Applicant company. It is also submitted that the majority of the workers of the company are members of the Applicant Union for the last 3 to 4 years and the same was intimated to the Non-Applicant Union by letter of resignation of the said workers. It is also stated that many of the employees of the company has not paid their yearly subscription fee to the Non-Applicant Union for last more than 3 to 4 years. It is further stated that the Non-Applicant Union's recognition should be cancelled and the affiant and the Union has no objection for grant of recognition to the Applicant Union as in fact, the Applicant Union is the only Union functioning the the Non-Applicant Company. Thus, the matter proceeded further and the Applicant Union filed all the relevant documents for which relying, they are praying for registration as recognised Union and have also placed on record all the original documents which are required as per the provisions of law *i. e.* M. R. T. U. and P. U. L. P. Act. In the course of proceeding, the rival Counsels argued regarding issue involved and after hearing in length and going through the contents therein and the documents on record, the issue which arises for my consideration is as below :—

Points

Findings

- (1) Whether the Applicant Union is eligible and entitled to get the registration as a recognised Union under the provisions of Section 14 of the M. R. T. U. and P. U. L. P. Act in the establishment of Non-Applicant Company ?
- (2) What order and relief ?

Affirmative.

As per final order.

Reasons

5. While arguing the issue, The learned Counsel for the Applicant Union has took me to the entire documents on record and convinced that all the relevant documents are there on record and the same also have been verified by placing the originals on record and the provisions of Section 19 is also complied and the copy of the constitution is there on record. While arguing, it is categorically stated that all the compliance of relevant documents is complied. Hence, the registration as recognised Union needs to be granted. But in this context, the learned Counsel for the Non-Applicant company by raising the objection which has been narrated in Ex. C-3 that on 1st September 2002, the Applicant Union have resorted and assisted the illegal strike and the members of the Applicant Union have participated and subsequently, the same has been appologised by the Applicant Union in writing. The documents which are there on record. I have gone through the same which are enclosed with affidavit Ex. C-4 but apart from the same in the affidavit Ex. C-5, it is the contention of the Non-Applicant Company that if they ensured that they are maintaining the industrial peace in the establishment of the company which is narrated at para 6(a) to (e) and if they are ready to accept the same as a precondition, the Non-Applicant company has no grievance if the registration as recognised Union is granted. In this context, the learned Counsel for the Applicant Union has submitted that they are ready to accept the same as a precondition and undertake to maintain peace accordingly and also filed the affidavit below Ex. U-8 and while arguing, learned Counsel for the Applicant Union has stated that they have no grievance if the condition which has put forth by the Non-Applicant company are levied and conditional registration be granted.

6. Thus, both the rival parties put up their grievance before me. After going through the entire documents which are there on record which needs to be considered while granting the registration as a recognised Union *i. e.* (1) The registered address of the Applicant Union, (2) A list of the members of the Applicant Union who are employed in the undertaking for which recofnition is sought, arranged alphabetically with date of such employees joining as a members, (3) A true copy of the certificate of recognition as a Trade Union, (4) Authority of the person for filing this application and doing all necessary thing on behalf of our Union. (5) A true copy of the constitution of the Applicant Union, (6) The Membership register for the relevant

period. (7) The original receipt books having book Nos. 224, 225, 226, 227, 228, 229 and 231, having membership receipts Nos, 11151 to 11450 and 11550 to 11547 for the period October, 2001 to December, 2001, if perused, it cannot be said that the Applicant Union is not having its majority membership in the company and even other wise, the Non-Applicant Union has categorically admitted the claim of the Applicant Union by filing affidavit Ex. UA-2 that they have lost their membership from last 3 to 4 years and not a single worker is paying them yearly subscription and it is their categorical submission that they have no grievance by cancelling their recognition granted the same to the Applicant Union for functioning as a recognised Union in the Non-Applicant company. Only the grievance remains regarding the Non-Applicant Company that as they have resorted to one day strike which is stated to be illegal under the provisions of law and as per the facts on record regarding the same, the apology has been given in writing by the Office Bearers of the Union to the management and as on today considering the contention of the Non-Applicant Company in the affidavits which are there on record i.e. Ex. C-3, Ex. C-4, Ex. C-5 and Ex. C-6 that only by levying the condition on the Applicant Union i.e. for maintaining the industrial peace and not to disturb the daily routine of the company which is narrated therein at para 6 of the said affidavit and if we peruse the documents further on record, the same has been admitted by the Applicant Union but considering the provisions of law, I have to see whether such type of conditional recognition can be granted or not as stated by the company. In this context, I say that it is an obligation on the part of the recognised Union and also on the part of the Non-Applicant Company to maintain the industrial peace for the vicinity and much more responsibility is on the shoulder of the recognised Union who is treated itself as a representative of the majority of the workers and it is the contention of the recognised Union that the Union is functioning in the concerned establishment for the interest of the workers. Hence, while granting the recognition, the said condition which has been stated by the company which are also admitted by the Applicant Union cannot be narrated in the judgment and order but as it has been admitted by the Applicant Union, I say that the Applicant should be cautious and act accordingly as they have placed the undertaking on record of the present application in reply to the submission and prayer made by the Non-Applicant company. Apart from this, considering the provisions of law and the documents which are required to be complied for getting the registration as a recognised Union in the establishment concerned in which the Applicant Union seeks the said registration as a recognised Union needs to be complied and in the present case of the Applicant Union, I have no hesitation to say that the Applicant Union has complied all the provisions of law and also filed all the relevant documents which are there on record needs to be scrutinised and perused prior to granting the recognition as prayed. Hence, considering all the documents on record and contentions and pleadings of the parties, the application for registration as a recognised Union in the establishment of the Non-Applicant Company filed by the Applicant Union needs to be granted for the reasons stated above Hence, the Order.

Order

(i) Application (MRTU) No.3 of 2002 is hereby granted.

(ii) It is hereby directed to issue a Certificate of Recognition registered as recognised Union in the establishment of the Non-Applicant Company as prayed by the Applicant Union.

No order as to costs.

J. P. LIMAYE

Member,

Industrial Court, Mumbai.

Mumbai,

Dated the 16th August 2003.

K. G. SATHE.

Registrar,

Industrial Court, Mumbai.

Dated the 29th August 2003.

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI.

BEFORE SHRI P. P. PATIL, MEMBER

COMPLAINT (ULP) No. 1722 OF 1991.—(1) Co-operative Bank Employees Union, Upendra Nagar, Senapati Bapat Marg, Dadar (West), Mumbai 400 028, (2) Shri Premanand Vithal Mayekar, A-6, 3rd floor, Jai Mangal Murti Co-op. Housing Society Ltd., Kanjur Village Road, Kanjur (East), Mumbai 400 078.—*Complainant Now Deceased*—(3) Smt. Shamika Premanand Mayekar, A-6, 3rd floor, Jai Mangal Murti Co-op. Housing Society Ltd., Kanjur Village Road, Kanjur (East), Bombay 400 078. *Complainant Versus*—(1) The Maharashtra State Co-operative Bank Ltd, through Shri Surendra Kumar Jain, General Manager 9, Maharashtra Chamber of Commerce Lane, Fort, Mumbai 400 023, (2) Shri D. G. Bhamre, Enquiry Officer, Maharashtra State Co-operative Bank, Ltd., Administrative Office, Agro Industrial Co-operative Dept., Vashi, New Bombay.— *Respondent*.

CORAM.—Shri P. P. Patil, Member,

Appearances.—Shri. Fernandes, Advocate for Complainants.

Shri. Metha, Advocate for Respondents.

Judgment

(Dated the 1st September 2003)

1. Complaint u/s. 28 read with item 9 of Schedule-IV of M. R. T. U. and P. U. L. P. Act. The Complainants are claiming the Respondents engaged in an Unfair Labour Practice covered under item 9 of Schedule-IV of M. R. T. U. and P. U. L. P. Act, by serving the Chargesheet. Placing under suspension and not paying the suspension allowance as per Standing Order. Facts in brief of Complaint are as follows :—

(i) Complainant No. 2 Shri Premanand Vithal Mayekar was in the Employment of Respondent No. 1 Bank as Officer Grade-II and after his death Smt. Shamika Premanand Mayekar being legal heir prosecuting Complaint. Deceased Complainant was served with the Chargesheet for three misconducts firstly, abetting, conniving at or attempting or committing of, theft, fraud or dishonesty in connection with the business, property of affairs of the Bank or its customers. Secondly, failure to account for or deliver up when they come into his hands, or concealment, misappropriation or conversion of cash of the Bank and, thirdly, doing any Act, prejudicial to the interest of the Bank. Deceased Complainant was placed under suspension by letter dated 16th August 1990 and initiated domestic enquiry against him. During enquiry 50% of Basic Pay paid the subsistence allowance.

2. Deceased Complainant had applied for Housing Loan for purchase of Block in Housing Society under the Respondent Bank Housing Scheme. After completing the formalities loan of Rs. 97,000 was sanctioned against demand of loan of Rs. 1,08,000. Though loan of Rs. 97,000 was sanctioned but paid initially Rs. 70,750 directly to Jai Mangal Murit Co-op. Housing Society Ltd., Kanjur (East), Mumbai 400 078. Complainant was in need of Residential place badly. The loan was advanced by Respondent No. 1 on taking the following securities :—

- (a) two personal Surties from amongst the Bank Employees,
- (b) Loan on Provident Fund and Gratuity amount,
- (c) Blank Promissori Note
- (d) Four L. I. C. Policy amounting to aggregate Rs. 50,000/-, endorsed in the name of the Bank and given in possession of the Bank ;
- (e) Authority to deduct from Salary monthly amount of Rs. 7000 to Rs. 7500.

(f) Undertaking as required by the bank from deceased Complainant. Deceased Complainant Paid Rs. 55,250 from time to time, therefore only Rs. 15,000 was balance to be paid. The loan amount was sanctioned after proper verification of documents and sufficient securities. The Deceased Complainant neither cheated nor received the Respondents while obtaining House Loan, inspite of this he was served with Chargesheet and placed him under suspension illegally, and in an arbitrary manner.

3. Enquiry Officer Shri D. G. Bhamre, who was in the employment of Respondent No. 1 as Chief Officer appointed to conduct the Enquiry against Deceased Complainant. Enquiry Officer conducted an enquiry without following the procedure and against principles of Natural Justice. When deceased Complainant was suspended at that time, he was covered under Junior grade Officer. General Manager Shri Surendra Kumar Jain had a grudge against deceased Complainant and out of his vindictiveness action was taken against deceased Complainant. Several letters were sent to Respondent No. 1 and also made request to Respondent No. 2 for payment of subsistence allowance as per Government notification dated 16th October 1971 and in accordance with the provisions of Standing Order. Deceased Complainant was entitled 100% subsistence allowance because an enquiry was delayed beyond the period of 180 days. The Respondent No. 1 deliberately did not pay 100% subsistence allowance. Respondent No. 2 Enquiry Officer D. G. Bhamre was inspiring for promotion to the higher grade therefore, he also did not consider the request of deceased Complainant, as he wanted to please the Management. Enquiry Officer did not follow the basic principles while recording evidence and without giving opportunity to deceased Complainant hurriedly completed the enquiry *Ex-parte*. Deceased Complainant was placed under suspension on false charges, and conducted enquiry without following principles of Natural Justice and filed to pay subsistence allowance as per Standing Order/Government Notification, therefore, Respondents this action amounts to an Unfair Labour Practice covered under Item 9 of Schedule-IV of M. R. T. U. and P. U. L. P. Act. Hence, file the Present Complaint.

4. Respondents have strongly resist the claim on the ground deceased Complainant Shri Premanand Mayekar was not an employee defined under Bombay Industrial Relation Act. Respondents have contended that deceased Complainant had applied for Housing Loan of Rs. 1,08,000 on the basis of "Architect" certificate who had shown value of the flat of Rs. 1,75,000, therefore, Respondent Bank had sanctioned Housing Loan of Rs. 97,000. Deceased Complainant had shown the value of flat inflated to Rs. 1,75,000 with *malafied* intention to obtain loan exceeding value of flat. Respondents after the Chargesheet was served upon deceased Complainant placed him under suspension by letter dated 16th August 1990 and paid 50% subsistence allowance though his request was to pay 100% allowance. According to Respondents the deceased Complainant was ask to produce declaration to the effect he was not in the employment of others for the relevant period. But deceased Complainant could not produce such certificate, hence, 100% subsistence allowance was not paid. Also Respondent are denying payment of 100% subsistence allowance because deceased Complainant was not an employee define under the provisions of Bombay Industrial Relation Act, therefore, not entitled 100% subsistence allowance. It is further contended that enquiry conducting against deceased Complainant was fair, legal and based on principles of Natural Justice.

5. There was reasonable suspicion to believe deceased Complainant on false document obtained Housing Loan from Bank and misuse, it. Respondents allegations are of acting enquiry Officer partially and contrary to the provisions of law. According to the Respondents every opportunity was given to deceased Complainant during enquiry to protect himself. Lastly contended by Respondents that they have not engaged in an unfair labour practice alleged against them.

My learned predecessor was placed to frame the following issues on the basis of pleading which are reproduced below and recorded my findings.

Issues.—(i) Whether the Complainant Union proves that the Respondents have engaged in Unfair Labour Practice under item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?

(ii) Whether the Complainant Union is entitled to get any reliefs as claimed in this Complainant ?

(iii) What orders ?

Findings.—(i) Yes.

(ii) Yes.

(iii) Complaint is allowed.

Reasons

6. At the outset there is no dispute about employment of deceased Complainant Shri Premanand Vithal Mayekar in the establishment of Respondent No. 1 as Officer Grade-II, who was placed under suspension by letter dated 16th August 1990 after serving the Chargesheet. The Charges levelled against deceased Complainant Premenand Vithal Mayeker were abetting, conniving at or attempting or committing of, theft, fraud or dishonesty in connection with the business property of affairs or the Bank or its customers; failure to account for or deliver up when they come into his hands, or concealment, misappropriation or conversion of cash of the Bank and doing any act, prejudicial to the interest of the Bank. The reason of serving Chargesheet according to the Respondent No. 1 was, the Complainant had submitted false documents showing excess value of the flat against which got sanctioned loan of Rs. 97,000. Thus according to the Respondent No. 1 by misrepresentating the value of flat, on false documents obtained excess amount of Housing Loan, therefore, this act of deceased complainant leads to fraud and dishonesty in connection with the business of Respondent Bank.

7. Parties to the Complainant have not led oral evidence. They are placing reliance on the enquiry paper, copy of report of enquiry officer is on record. The enquiry officer in its report given findings on page No. 14, 15, 16 and 17 to the effect that moral responsibility of deceased Complainant was to repay the loan. Without institution Primary Enquiry and without preliminary report, misconducts are not proved as deceased Complainant paid the installment. The charge of abetment or attempting to theft or dishonesty not proved against the delinquents Complainant. "The learned Advocate for Complainant has submitted that as per report and finding of Enquiry Officer, Respondent failed to prove the alleged misconduct. Deceased Complainant did not misuse the loan amount nor it is misappropriated. Copy of Standing Order applicable to Respondent is placed on record and as per sub-Clause-D of Clause-15 misconduct relating to abetting, conniving at or attempting or committing of, theft, fraud or dishonesty in connection with the business, property or affairs of the Bank or its customers. Respondents are trying to convince the Court as to how deceased Complainant had committed misconduct as defined under sub-Clause-D of Clause-15 of Standing Order on submission of false documents got sanctioned loan of Rs. 97,000 and this amount is more than value of flat, against which applied for loan. The Scheme under which an application was submitted by deceased Complainant for Housing loan applicable to employment of Respondent is made available under the said Scheme, Housing Loan was to be advanced to Bank employees as per the terms and conditions of the Scheme. If loan amount is not properly utilised for the purpose loan was taken under scheme, the concerned employees is liable for repayment of loan immediately, together with interest @ 15% p. a. Therefore, learned Advocate for Complainant has submitted that even as per terms and conditions of the Scheme approved by Respondent Bank, deceased Complainant did not commit any misconduct. Further, learned Advocate for Complainant made submissions that without admitting even it is presumed that excess amount of Housing Loan was taken, under such circumstances also this action does not fall in any of the misconduct defined under Standing Order. According to the Complainant there is no intention to obtain housing loan. The Respondent Bank has failed to prove allegation that on false documents deceased Complainant had obtained the loan. Learned Advocate for Complainant has pointed out as to how deceased Complainant acted *bonafidely* while repaying the loan amount with in short time. Deceased Complainant repaid the loan from time to time total Rs. 55, 250. In fact the loan was advanced by the Respondent to deceased Complainant on security like loan on Provident Fund and Gratuity amount, Promissory Note, L. I. C. Policy, undertaking and personal sureties from amongst the Bank employees. In view of this there was no possibilities of committing theft with the Bank or not to repay loan. Having been considered the nature of sureties, Respondent Bank advanced Housing Loan to deceased Complainant and assured of recovery of entire loan from deceased Complainant with interest.

8. There is no dispute that subsequently suspension of the Complainant was withdrawn by the Respondent Bank with out extending benefits of suspension period. Deceased Complainant was retired in 1999. The grievance of Complainant is for illegal suspension by which deceased Complainant deprived from getting benefits. Therefore, wife of deceased Complainant claiming monetary benefits. It means from enquiry paper and particularly the enquiry report that no misconduct was proved against deceased Complainant, during enquiry despite of this the punishment was imposed. In fact misconduct is not covered under the Standing Order, therefore, there is no question of breach of Standing Order. After withdrawal of suspension, deceased Complainant was entitled to restore his original position and benefits. Learned Advocate for Complainant has placed reliance on the Case *A. L. Kalra V/s. The Project and Equipment Corporation of India Limited reported in AIR 1984 Supreme Court Page No. 1361*, wherein it is held in Para 26 :—

“Now if what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence, but peruse under 1975 Rules the Respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An administrative authority who purports to act by its regulation must be held bound by the regulation. ‘Even if these regulations have no force of law is public employment, and therefore, an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulations.’”

9. By serving chargesheet on deceased Complainant for the misconduct alleged is an act of unfair labour practice on the part of Respondent Bank because neither the scheme framed by Respondent to advance Housing Loan to its employee, nor Standing Order covers the alleged misconduct. Therefore, Respondent Bank engaged in unfair labour practice covered under item 9 of Schedule IV of M. R. T. U. and P. U. L. P. Act. The heirs (wife of deceased Complainant) entitled to monetary benefits during suspension period of deceased Complainant, if not paid by the Respondent Bank. In this background of the matter Complaint deserves to be allowed as per order passed below :—

Order

Complaint is allowed.

It is declared that the Respondents are engaged in an unfair labour practice covered under Item 9 of Schedule-IV of M. R. T. U. and P. U. L. P. Act.

The suspension of deceased Complainant is declared illegal, therefore, Complainant No. 3 is entitled for monetary benefits of said period if not paid.

Parties shall bear their own Costs.

Mumbai,

Dated the 1st September 2002.

P. P. PATIL

Member,

Industrial Court, Mumbai.

K. G. SATHE.

Registrar,

Industrial Court, Mumbai.

Dated the 8th September 2003.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. K. CHAVARE, PRESIDENT

REVISION APPLICATION (ULP) No. 102 of 2003—Mrs. Krishna Batra.—*Applicant—Versus.*—(1) Indian Motion Picture Producers Association, IMPPA House, Dr. Ambedkar Road, Bandra (West) Mumbai, (2) Mr. Dinkar Chowdhary, Director General, IMPPA House, Dr. Ambedkar Road, Bandra (West), Mumbai, (3) Mr. Satish Khanna Convenor, 'IMPPA House' Dr. Ambedkar Road, Bandra (West), Mumbai, (4) Shri. A. H. Shingne, Hon'ble Presiding Officer, 9th Labour Court, Mumbai.—*Opponents.*

CORAM.—Shri. P. K. CHAVARE, PRESIDENT.

Appearances.—Ms. Suvarna Joshi, Advocate for Applicant,
Shri. A. Mathew, Advocate for Opponent Nos. 1 to 3.

Judgment

1. The learned Presiding Officer of the 9th Labour Court, Mumbai by his order dated 5th July 2003 rejected the application of the Revision Petitioner Complainant in which it was prayed that her services be not terminated during the pendency of the complaint. Being aggrieved by the said order, the present Revision has been preferred. The facts which are not seriously in disputes are listed below.

2. The Non-Petitioner No. 1 is the employer of the Petitioner. She is working with the said institution since last more than 23 years. Her designation is styled as Assistant Secretary. A termination order was served on her on 19th June 2003, terminating her services with effect from 1st July 2003. She filed a complaint (ULP) No. 321 of 2003 before the 9th Labour Court, Mumbai on 27th July 2003. She claimed that she was a workman as she used to work as a Typist and her termination in without following due process of law *i.e.* without issuing any show cause notice and without holding any enquiry. Along with the said complaint, she filed an application for interim relief under section 30(2) of the MRTU & PULP Act, 1971 (hereinafter referred to as the "Act" for the same of brevity). The employer claimed that she was not a workmen and was discharging the functions of the managerial nature and therefore, she was not entitled to the relief claimed.

3. The learned Judge after considering the material before him, came to the conclusion that the status of the Complainant being a workman was seriously in dispute and unless that status is decided first, it will not be advisable to grant the interim relief to protect her employment during the pendency of the proceeding. The learned Judge further observed that the balance of convenience also did not lie in favour of the Complainant because in the event of her success, she was entitled to get back wages. The said order was passed on 5th July 2003 which is the subject matter of the present Revision Petition.

4. I have heard the elaborate submissions of learned Advocate Mrs. Suvarna Joshi for the Revision Petitioner and learned Advocate Shri. Mathew for the 3 Respondents. From the submissions advanced at the bar, following points arise for determination.

Points.— 1. Did the Lower Court commit on error apparent on the face of record in rejecting the application for grant of interim relief ?

2. What order ?

Findings.— (1) Negative.

(2) As per final order.

Reasons

5. The crux of the matter is that the Complainant claims to be discharging the duties of a clerical nature, mainly of a typist. The employer claims that she is discharging the duties of menagerial nature. It was brought to my notice that though the Complainant has signed certain correspondence, the very correspondence was typed by her and accordingly, the said correspondence which has been signed by the Complainant as Assistant Secretary also beare the remak “kb” to indicate that the said correspondence has been typed by Mrs. Krishna Batra the Complainant. Can it be said that merely becuase the letter has been typed by the Assistant Secretary, she cannot be said to be discharging the functions of managerial nature ? Can a Senior Executive be prevented from typing a letter on his own if he chooses to do so ? Therefore, merely because she has typed the correspondence which she has signed as Assistant Secretary, it is difficult to come to the conclusion that she is discharging the duties of clerical nature. The fact remains that the correspondence which was produced before the Labour Court has been signed by the Complainant in the capacity of Assistant Secraterly and therefore, the learned Labour Judge cannot be said to have landed in an error by holding that the status of the Complainant being a workman is seriously in doubt. Unless there is an error apparent in the said finding, this Court while emergising the revisional jurisdiction will not be justified in interfering with that finding.

6. I will be feiling in my duties if I do not mention here that the learned Advocate for the Petitioner brought it to my notice that she is the only earning hand in the family and has got grown up children which are attending school/college and in case the employee is not protected during the pendency of the complaint, the family would be put to greater hardship. This issue can be considered only when the Court observe that there exists a *prima facie* came to say that the Petitioner/Complainant is a workman. When the status of the Petitioner is seriously in doubt, the only way left is to record the evidence in detail to find out as to whether she is a workman or otherwise which can be done only when the complaint is heard on merits. The issue of hardship, balance of convenience etc. is the issue subsequent to the Court's recording a *prima facie* finding that there is material to show that the Complainant is a workman and her status is not seriously in dispute.

In the light of these reasons, the Petition is liable to be dismissed. Hence, the order.

ORDER

(i) The Revision Petition is hereby dismissed.

(ii) No order as to costs.

(iii) The Record and Proceedings called from the Labour Court be sent back to the Labour Court forthwith.

P. K. CHAVARE,
President,

Dated the 5th September 2003.

Industrial Court, Maharashtra Mumbai.

K. G. SATHE,
Registrar,

Industrial Court, Mumbai,

Dated the 10th September 2003.

IN THE INDUSTRIAL COURT, AT MUMBAI

COMPLAINT (ULP) No. 342 OF 1990—(1) S. Ramchandran, S-2/102, “Shree Dwarkadish”, Bangur Nagar, Goregaon (West), Mumbai 400 090, (2) A. R. Venugopalan, J-1401, “Jai Mandir” CHS Ltd., Bangur Nagar, Goregaon (West), Mumbai 400 090, (3) Mr. I. K. Bhaskaran, 91/3242, “Deep Mandir”, Tilak Nagar, Chembur, Mumbai 400 089.—*Complainants—Versus.*—(1) M/s. S. G. Chemicals & Dyes Trading Ltd., Express Building, 14 ‘E’ Road, Churchgate, Mumbai 400 020, (2) Mr. M. N. Parikh, Ambalal Sarabhai Enterprises Ltd., Shahibaug Houses, Walchand Hirechand Marg, Ballard Estate, Mumbai 400 038, (3) Mr. M. R. S. Mani, M/s. S. G. Chemicals & Dyes Trading Ltd., Pharmasutical Division, Shahibaug House, Walchand Hirachand Marg, Ballard Estate, Mumbai 400 038—*Respondents.*

In the matter of complaint of unfair labour practices under items 9 of Sch. IV of MRTU and PULP Act.

Present — Shri. P. P. PATIL, Member, Industrial Court, Mumbai.

Appearances — Mr. P. M. Patel, Advocate for Complainants,
Shri. S. V. Alva, Advocate for the Respondents.

Judgment and Order

(Dated 30th August 2003)

The complaint is under Sec. 28 read with items 5 and 9 of Sch. IV of the MRTU & PULP Act, 1971.

1. The Complainants are claiming that the Respondents engaged in unfair labour practices under items 5 and 9 of Sch. IV of the MRTU and PULP Act, 1971 on account of failure to extend the benefits of settlement dated 28th April 1988, particularly in respect of *ex-gratia* amount of Rs. 300 for every completed year of service and *ex-gratia* one time lumpsum amount of Rs. 3500.

2. The facts in brief of the complaint are as follows :—

The Complainants were working continuously since the dates of their appointments with the Respondents. The Complainants when tendered their resignations on 12th May 1988, on that day, they were discharging their duties as the sectional heads. The Respondent No. 3 having induced the Complainants to sign the letters of voluntary retirement on the assurance that by doing so, they will be paid the same terminal benefits as were paid to all other workmen of the Respondent company irrespective of whether they were members of the trade Union or not. The Govt. of Maharashtra did not permit the Respondents to close down the establishment in the year 1984. SG Chemicals & Dyes Trading Employees Union raised demand not to terminate the services of the employees in the event of closing down the establishment. The Union had filed Complaint (ULP) No. 1273 of 1984 under Sec. 28 of the act which come to be dismissed by the Industrial Court by its order dated 26th July 1985 against which appeal by Special Leave before the Hon’ble Apex Court bearing No. 830 of 1986 was preferred by the Union in which the Hon’ble Supreme Court was pleased to set aside the order of the Industrial Court *vide* order dated 3rd April 1986 and held that the closure of the Respondent company was illegal. Thereafter, an application under Sec. 25-0 of Industrial Disputes Act was submitted to the Govt. of Maharashtra to allow them to close down the establishment, but that application was rejected by Government. The said order passed by the Govt. of Maharashtra was challenged by the Respondents in Writ Petition No. 1962 of 1986, which was admitted but did not grant the stay.

3. The Respondent company entered into negotiations with the Union and arrived at a settlement. The Union and the Respondent company entered into settlement on 28th April, 1988 agreeing thereby to pay terminal benefits to the workman on giving voluntary retirement letters. As per the settlement dated 28th April 1988, the Complainants did not receive *ex-gratia* amount of Rs. 300 for every completed year of service and *ex-gretia* one time lumpsum amount of Rs. 3500, hence filed the present complaint.

4. The Respondents have filed their written statement at Exh. C-2 and thereby raised objection to the maintainability of the present complaint on the grounds of misjoinder of party, the complaint is barred by limitation and the Complainants are not workmen within the meaning of Sec. 2(s) of ID Act. Further contended by the Respondents that the Complainants as per letters of their resignations have received the voluntary retirement benefits and they are not entitled to the benefits of the settlement dated 28th April 1983, as they were not members of the said Union. The Respondents have given details of the dues of the Complainants allotted to them. According to the Respondents, the Complainant Ramchandran was designated as the Branch Administrator and was responsible for administration, involving, dealing with stockists, customers, tax authorities and also filing sales tax returns, etc. The Complainant Vanugopalan was discharging duties as the Assistant Factory Manager which includes supervision of activities of the factory, maintenance of machinery, building, placement of workmen. The workman Vanugopalan was the seniormost officer in charge at Trombay factory. The Complainant Bhaskaran was the sectional head and responsible for supervising the activities relating to inventory, control, payment of the factory expenses, doing administrative function and supervising the work of the employees. Therefore, the Complainants do not come within the definition of Sec 2(s) of the ID Act.

5. The proceedings initiated before the Industrial Court by the Union, Special Leave Petition before the Hon'ble Apex Court and the writ Petition before the Hon'ble High Court not disputed by the Respondents. The settlement arrived at between the Union and the Respondents management not disputed by the Respondents, but denied that they are engaged in unfair labour practices under items 5 and 9 of Sch. IV of the MRTU and PULP Act by not paying them *ex-gratia* amount equivalent to Rs. 300 for every completed year of service and *ex-gratia* onetime lumpsum amount of Rs. 3500 to the Complainants.

6. My learned Predecessor was pleased to frame the following issues to which I have noted my findings.

Issues.—(1) Whether the Complainants have proved that the Respondents have committed unfair labour practices under items 5 and 9 of Sch. IV of the MRTU & PULP Act, 1971 ?

(1-A) Whether the Complainants are workman within the meaning of definition under the MRTU & PULP Act, 1971 ?

(2) Whether the Complainants are entitled to the reliefs as claimed in the present complaint ?

(3) What orders ?

Findings.—(1) Yes.

(2) Yes.

(3) Complaint is allowed.

Reasons

7. In view of the objection raised by the Respondents to the maintainability of the present complaint on the ground that the Complainants are not workmen as defined under Sec. 2(s) of Industrial Disputes Act, it is necessary to take this point first for determination. To decide status of workman, designation, quantum of wages/salary would not be the decisive factors because nature of duties allotted to workman is the crucial and important criteria to be considered. All the three Complainants are claiming their status as the sectional heads when they have tendered their registrations of 12th May 1988. The Complainants have not given in the complaint the details of nature of their duties allotted to them but in their oral evidence described their duties. The Complainant Ramchandran has stated in his evidence that he had no power to recommend any workman for promotion or to sanction leave to the workmen and he was not looking after the sales department of the Respondent company. According to the Complainant, Ramchandran, he was discharging the duties like to take dictation from others, type letters, transcribe the dictation, to write sales tax registers etc. Further, Ramchandran made it clear that nobody was working under him during his service tenure. The Complainant Venugopalan in his evidence has stated that he was working as the Assistant Factory Manager

and the nature of duties allotted to him were like to send all forms as per the rules and regulations to the Factory Manager, to send storage licence, directors Board licence, factory licence to the Factory Manager to write the local delivery challans. Further, Venugopalan has made it clear about his duties like mixing up dyes and chemicals, sending samples to the laboratories, writing muster roll, According to the Complainant Venugopalan, he was not doing the job of supervising and placement of workers. In the cross examination, Venugopalan has admitted that he was the seniormost employee at the establishment at Trombay. The Complainant Bhaskaran made a statement on oath about his status as the sectional head and discharging duties like typing work, looking for the stock pin cards, receiving and forwarding materials, sending samples to the laboratories. Complainant Bhaskaran further stated in his evidence that he was not authorised to grant leave of any employee or recommend for promotion and no employee was working under him. In the cross examination, the Complainant Bhaskaran has admitted about his promotion as the sectional head in the years 1981 and in 1983 he was working as the sectional head. If we carefully go through the testimonies of all the three Complainants, it may be very much clear that the Respondents fail to bring sufficient material in the cross examination of the Complainants to disbelieve the evidence of the workman Complainants about their nature of duties performed during their service period in the establishment of the Respondent.

7. The Respondent have examined their Manager Mr. Nigam through whom tried to bring on record the nature of duties allotted to the Complainants. Witness Nigam has stated in his evidence about the nature of duties allotted to the Complainants Ramchandra like attending sales tax matters, the accounts branch co-ordination, to contact stockists. Witness Nigam has stated in his evidence that the Complainant Ramchandran was the branch administrator. Witness Nigam has given details about nature of duties allotted to the Complainant Venugopalan. Witness Nigam has stated in his evidence that the Complainant Venugopalan was the Assistant Factory Manager, supervising the factory operations, attending the factory and municipal inspectors and other authorities, getting the mixed chemicals checked, mixed dyes, liquid of dyes and liquid chemicals. The duties of the Complainant No. 3 Bhaskaran is stated by the witness Nigam like to despatch challans and supervise the despatch section, to attend the job of the Assistant Factory Manager in his absence. Witness Nigam has admitted the status of the Complainant Bhaskaran as the sectional head in the establishment of the Respondent company.

8. The learned Advocate for the Complainants invited attention of the Court to the letters of resignation Exhs. C-10 to C-12 tendered by the present Complainants wherein mentioned that they are working as the sectional heads. The learned Advocate for the Respondents has given more emphasis to the letters dated 18th August 1983 Exh. C-8 issued by the Respondents management wherein mentioned in para 1 that the management was pleased to inform the Complainants that they have decided to designate the Complainants as the Branch Administrator. The Complainant Ramchandran has denied the receipt of the letter Exh. C-8 from the Respondents. It is pertinent to note that after going through the contents of the letters Exh. C-8, it is clear that the management decided to designate the Complainant Ramchandran as the branch administrator. But there is no document to show that the said letter was duly received by the Complainant Ramchandran, and he had acted upon it. Further, the learned advocate for the Respondents has pointed out the certificate dated 20th March 1984 Exh. C-18 in the name of the Complainant Venugopalan wherein mentioned the functions/duties of the said Complainant such as supervision of all activities at the factory maintenance of discipline, maintenance of machinery, building, placement of workers etc. In the last para of the said certificate Exh. C-18, made it clear that it was issued on the request of the Complainant Venugopalan for getting his admission for enrolling himself as a student for the post graduate diploma course in the management studies and for no other purpose whatsoever. The learned advocate for the Complainants has submitted that the purpose of issuing the certificate Exh. C-18 was only for getting admission for post graduate diploma course in the management studies to Mr. Venugopalan, which cannot be used in this case to determine the nature of duties allotted to the said Complainant, as it is specifically mentioned therein that for no other purpose whatsoever the said certificate will be useful.

9. There was no dispute about the Complaint (ULP) No. 781 of 1988 was filed by the Complainant J. R. Nava against the Respondent for recovery of balance amount of Rs. 62,000 which include *ex-gratia* amount equivalent to Rs. 300 for each completed year of service and *ex-gratia* one time lumpsum Rs. 3500. The copy of the order passed in the said complaint is placed on record and while parting with the said complaint my collegues was pleased to grant the relief and held that the Complainant in the said case J. R. Nava was working as the sectional head alongwith the present Complainants is a workman and entitled to the benefits of the settlement dated 28th April 1988. Copy of the order passed in Writ Petition No. 1506 of 1990 is placed on record to show that the Hon'ble High Court of Bombay was pleased to dismiss the said petition filed against the order dated 13th December 1989 passed in complaint (ULP) No. 581 of 1988.

10. The learned advocate for the Respondents has placed reliance on the case of H. R. Adyanthaye V/s. Sandoz (India) Limited reported in 1994 II CLR 552-SC, wherein held in para 8 that :—

“We are, therefore, on the view that the contention raised on behalf of the management in this appeal *viz.* since the medical representatives are not workmen within the meaning of the Maharashtra Act, the complaint made to the Industrial Court under that Act was not maintainable has to be accepted. Hence the complaint filed by the Appellant workman under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court.”

The ratio laid down in the above cited case is not applicable because the facts of the present case are entirely different from the facts of the case cited above. In the instant case, the Complainants were not working as the medical representatives or discharging their duties for promoting the sales of the Respondent company. Further, the learned Advocate for the Respondents has placed reliance on the case of Apparao B. Manore V/s. Wandleside National Conductors Ltd., & others reported in 1994 II CLR 793, Bombay, wherein held in para 5 that :—

“Merely because the Petitioner was entrusted with the work of coalating and assessing date with regard to the machines in various departments it would not be possible to say that he was working as clerk or a workman even during the said period.

Further, held in the case (supra) :—

“What needs to be examined is the predominant capacity or nature of employment. The fact that for a few days, here or there, there is difference in the work done by the Petitioner does not militate against the basic capacity or character of his employment.”

In the instant case, there are no changes intermittantly in the working of the present Complainants, therefore, the ratio laid down in the above cited case not helpful the Respondents. Further reliance is placed by the learned Advocate for the Respondents on the case of Ramesh R. Wase V/s. Commissioner, Revenue Division, Amravati, reported in 1975 LIC 546 Bombay (at Nagpur) wherein held in para 8 that :—

“In order to dub the work as “supervisory” the person concerned must have control over the subordinates and the concerned person should have the power to sanction leave, give promotion etc. which is only one of the facts of the supervisory work. That is not the be all and of the term “Supervisory work”. The supervision is required to be made in some other different way, like over the quality of work and over other aspects such as to see and examine whether the work is completed or not in satisfactory manner, and in keeping with specifications, that also becomes necessary the supervisory work. It is therefore, clear that really speaking, none of the duties of the Petitioner are of technical nature, but are of supervisory nature”.

Further reliance is placed by the learned advocate for the Respondents on the case of Union Carbide (India) Ltd., V/s. D. Samuel and others reported in 1998 II CLR 736 Bombay wherein held in para on that :—

“From consideration of the aforesaid judgements, a supervisor other than one who is not exercising either by nature of duties attached to the office or by reason of powers vested in him functions mainly of a managerial nature must exercise supervisory functions and draw wages exceeding Rs. 1600 per mansum.”

Thus, it is clear that the Court has to see main and substantial work for which an employee has been employed and engaged to do. Neither designation of employee is decisive, nor any incidental work that may be done or required to be done, by such employee shall get him outside purview of the workmen if the principal job and the nature of employment of such employee is manual, technical or clerical. The learned advocate for the Respondents tried to convince this Court as to how those Complainants are not entitled to invoke jurisdiction of this Court and filed a complaint under the MRTU & PULP Act as seen as they have tendered their resignations and accepted it by the Respondents, no relationship of employer and employees exist. The learned advocate for the Respondents has further placed reliance on the case of *Everestee V/s. District Labour Officer* reported in 1999 II CLR 380 Kerala, wherein held in para 9 that having voluntarily tendered the resignations pursuant to the scheme for voluntary retirement scheme and accepted it by the management and all benefits arising out of such resignations has been paid, employee cannot be treated as workman under Sec. 2(s) of the ID Act. Therefore, according to the Respondents, the Complainants cannot claim benefits in pursuance of the settlement dated 28th April 1988, because they are not workman as per duties assigned and discharged as well as since the date of tendering the resignations and accepted by the management, the Complainants ceased to be employees of the Respondent company.

11. In complaint (ULP) No. 781 of 1988, employees JR Nava was discharging identical duties which were allotted to the present Complainants, succeeded in getting benefits which are claimed in the present complaint and the Hon'ble High Court was pleased to dismiss the writ petition filed against the order passed by the Industrial Court, Mumbai, in Complaint (ULP) No. 781 of 1988. Therefore, say of the Complainants is that the case of Jr. Nava and their present case are identical including the nature of duties discharged by them and the said order of the Industrial Court is not interfered with by the Hon'ble High Court, under such circumstances, they are also entitled for the benefits of the settlement dated 28th April 1988. The Respondents have failed to prove their grievances to the maintainability of the complaint on the point that the present Complainants are not workman. No material is brought on record to show that the Complainants were discharging supervisory duties. Mere designation such as sectional head or Asst. Manager does not exclude the Complainants from definition of the workman laid down under Sec. 2 (s) of the ID Act, therefore, the present complaint is maintainable.

12. The resignation letters Exh. C-10 to Exh. C-12 speak about retirement benefits claimed by the Complainants and taking help of those letters of resignation the Respondents have come with the case that beyond the reliefs mentioned in the said letters the Complainants cannot claim. Also the objection raised to the reliefs in pursuance of the settlement on the grounds that the Complainants were not members of the Union and the settlement was only applicable for the members of the Union. It is pertinent to note that once the sectional head Jr. Nava is entitled to the benefits of the said settlement on the basis of the orders of the Courts, the case of the present Complainants cannot be differentiated merely because the Complainants were not members of the Union *i.e.* SG Chemicals & Dyes Trading Employees Union that does not mean they cannot get the benefits of the settlement entered into between the said Union and the Respondent management. The denial of benefits of the said settlement on the part of the Respondents itself show that they have engaged in unfair labour practice under item 5 of Sch. IV of the MRTU & PULP Act.

13. The Complainants are claiming benefits of sub clauses (ii) and (iii) of sub clause (c) of Clause 2 of the settlement dated 28th April 1988, which are relating to the *ex-gretia* amount equivalent to Rs. 300 for every completed year of service and *ex-gratia* one time lumpsum amount Rs. 3500. The present Complainants have given their details in paras (g), (h) and (i) of the complaint. Complainant Ramchandran is claiming total Rs. 11,600 and the claim of the Complainants Nos. 2 and 3 *viz.* Mr. Venugopalan and Mr. Bhaskaran is at Rs. 10,400 each. The Complainants are also claiming the said amounts together with interest at the rate of 18% per annum and for that purposes giving explanation that the Respondents have unnecessarily retained said amounts from the year 1988 onwards. The rate of interest on the said amounts

claimed by the Complainants is, no doubt, exorbitant. As the Respondents have retained the amounts referred above since 1988, the Complainants are entitled to then interest ever the said amounts at the rate of 6% per annum from the date they filed the present complaint *i.e.* from 6th April 1990 till realization of the amounts. In this view of the matter, the complaint deserves to be allowed as per the order passed below :—

Order

(1) Complaint (ULP) No. 342 of 1990 is allowed.

(2) It is hereby declared that the Respondents have engaged in unfair labour practices covered under items 5 and 9 of Sch. IV of the MRTU & PULP Act, 1971.

(3) The Respondent are hereby directed to pay Rs. 11,600 to the Complainant Mr. Ramchandran and Rs. 10,400 each to the Complainants Venugopalan and Mr. Bhaskaran together with interest at the rate of 6% per annum from 6th April 1990 till realization of the said amounts.

(4) No order as to costs.

Mumbai,
dated the 30th August 2003.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

S. R. ADAV
Dy. Registrar,
Industrial Court, Mumbai,
dated the 3rd September 2003.